

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHARLES ANTHONY GILL, #1737217 §
VS. § CIVIL ACTION NO. 6:14cv593
DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

Petitioner Charles Anthony Gill, an inmate confined in the Texas prison system, filed the above-styled and numbered petition for a writ of habeas corpus challenging his Van Zandt County conviction for injury to a child. The cause of action was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed as time-barred. Petitioner has filed objections.

Magistrate Judge Mitchell concluded that the petition was due on April 9, 2014, but it was not filed until more than two months later on June 24, 2014. In his objections, Petitioner notified the Court for the first time that he placed his state application for a writ of habeas corpus in the prison mailing system on December 12, 2013. He thus correctly noted that he is entitled to an additional seven days tolling based on the State mailbox rule. *See Richards v. Thaler*, 710 F.3d 573, 578-79 (5th Cir. 2013). Consequently, the present petition was due on April 16, 2014. He also asserted that he should be entitled to equitable tolling because he did not have access to a law library while confined in a county jail. Magistrate Judge Mitchell correctly concluded that his lack of access to a law library did not amount to the type of extraordinary circumstances necessary to be entitled to equitable tolling. *See Krause v. Thaler*, 637 F.3d 558, 560-61 (5th Cir. 2011); *Scott v. Johnson*, 227 F.3d 260, 263 & n.3 (5th Cir. 2000); *Felder v. Johnson*, 204 F.3d 168, 171-72 (5th Cir. 2000). Consequently, the present petition was still filed more than two months too late and should accordingly be dismissed as time-barred.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings, other than the due date of April 9, 2014, and conclusions of the Magistrate Judge are correct and the objections of Petitioner are without merit. The petition is time-barred. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

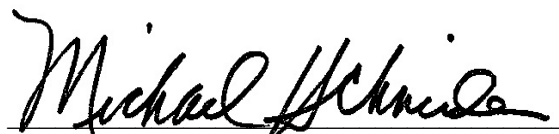
ORDERED that the Report and Recommendation (docket entry #6) is **ADOPTED**. It is further

ORDERED that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice as time-barred. A certificate of appealability is **DENIED**. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 27th day of August, 2014.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE